

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 147/2021

Shakir Habib Khan Pathan,
aged about 47 years, Occupation Contractor,
R/o Kurkheda, Ta. Kurkheda, Dist. Gadchiroli.

PETITIONER

.....VERSUS.....

1. State of Maharashtra, Through it's Secretary,
Rural Development and Water Conservation
Department, Mantralaya, Mumbai.
2. The Chief Executive Officer,
Z.P. Gadchiroli.
3. Executive Engineer,
Rural Water Supply Department,
Z.P. Gadchiroli.
4. Joint Director Local Audit, Gadchiroli.

RESPONDENTS

Shri V.N. Morande, counsel for the petitioner.
Shri A.M. Deshpande, Additional Government Pleader for the respondent nos.1
and 4.
Smt. M.P. Munshi, counsel for the respondent nos.2 and 3.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : 31ST MARCH, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order dated 22.05.2020 by which the Chief Executive Officer, Zilla Parishad, Gadchiroli has blacklisted the petitioner in the matter of participation in tenders to be issued in future in Gadchiroli district including at the Gram Panchayat level. This order of blacklisting is to operate till the

adjudication of the criminal proceedings that were filed against the petitioner.

3. Relevant facts are that the petitioner is registered as Class-4 Contractor with Zilla Parishad, Gadchiroli. He has participated in various tenders issued by the Zilla Parishad and has been satisfactorily carrying out the works assigned to him. In Financial Year 2013-14, the petitioner was allotted the work for construction of Ashram School for an amount of Rs.19,95,131/-. In the month of March-2014 running bills were paid to various contractors for the works done including the petitioner. On the basis of a complaint by a Member of the Zilla Parishad that the work allotted under those tenders was incomplete, an Enquiry Committee was constituted by the Zilla Parishad. In that enquiry it was found that certain payment had been made even for work that was not completed. Crime No.32 of 2015 was thus registered at Police Station Korchi against the petitioner and three other contractors as well as four engineers of the Water Supply Department of the Zilla Parishad at the behest of the Executive Engineer of the Zilla Parishad. The accused in that crime approached this Court by filing various applications seeking grant of anticipatory bail. A learned Single Judge on 08.12.2015 directed the Superintending Engineer, Public Works Department, Gadchiroli to visit the sites in question and submit a report with regard to the work

undertaken by the accused. Thereafter, a report was submitted by the Superintending Engineer noting therein that there was a shortfall of the work allotted and despite that payments had been made. As regards the petitioner, it was stated that the petitioner had been paid an amount of Rs.9,14,897/- which exceeded the value of the work undertaken. On 17.04.2020 a show cause notice was issued by the Zilla Parishad to the petitioner calling upon him as to why his name should not be put in the list of blacklisted contractors for the aforesaid reasons. The petitioner replied to that show cause notice on 21.04.2020. Since the Zilla Parishad was not satisfied with the reply as given, another show cause notice dated 30.04.2020 was issued to the petitioner which was again replied on 02.05.2020. It is thereafter that on 22.05.2020 that the impugned order placing the petitioner in the list of blacklisted contractors till conclusion of the pending proceedings came to be passed. Being aggrieved, the aforesaid order has been challenged in this writ petition.

4. Shri V.N. Morande, learned counsel for the petitioner submitted that merely on the basis of registration of the First Information Report, the Zilla Parishad had proceeded to blacklist the petitioner. The alleged incident had occurred in the Financial Year 2013-14 and it was only on 17.07.2020 and 30.04.2020 that the Zilla Parishad issued show cause notices to the petitioner. For all these years the petitioner had been

participating in various tenders that were issued by the Zilla Parishad and had successfully completed those works. The impugned action of blacklisting was based on the directions issued by the Assistant Director, Local Audit Fund. Besides that there was no other reason to blacklist the petitioner especially after more than five years of the alleged incident. He referred to the Government Resolution dated 30.07.2020 in that regard. On this count, it was submitted that the order of blacklisting was bad in law. Without prejudice to the aforesaid, it was submitted that the order of blacklisting was to operate till the conclusion of the criminal proceedings that were pending pursuant to First Information Report No.32 of 2015. The blacklisting thus was to operate for an indefinite period and on this count also it was unsustainable. In support of the said contention, the learned counsel placed reliance on the decision in *M/s Kulja Industries Limited Versus Chief General Manager, W.T. Proj. BSNL & Others* [2014 All SCR 90]. It was thus submitted that on these counts the order of blacklisting was liable to be set aside.

5. Smt. M.P. Munshi, learned counsel for the respondent nos.2 and 3 supported the impugned order. It was stated that in the enquiry conducted by the Superintending Engineer pursuant to the directions issued by this Court the report as submitted indicated that the petitioner had been paid money for the work which was never done. After that

report was submitted, the matter was examined by the Local Audit Department. On 04.03.2020 it issued a communication to the Zilla Parishad stating therein that there was infact misappropriation while undertaking the works under the tender and it was for the Zilla Parishad to take further action. Based on such communication the Zilla Parishad had issued two show cause notices to the petitioner and after considering his reply had proceeded to blacklist him. Since the criminal trial was pending in the Court, it was deemed fit to blacklist the petitioner till the conclusion of that criminal trial. Merely because the petitioner had participated in the tender process between 2014-2020, the same would not absolve him of the illegal acts. After granting full opportunity to the petitioner the impugned order was passed and hence the same did not call for any interference.

Shri A.M. Deshpande, the Additional Government Pleader for the respondent nos.1 and 4 also supported the order of blacklisting. He referred to the affidavit filed on behalf of the respondent no.4 and submitted that the audit report as prepared clearly indicted the petitioner. The impugned action was taken on the basis of material available and therefore there was no reason to set aside the order of blacklisting.

6. We have heard the learned counsel for the parties at length and we have also perused the documents on record. After giving due

consideration to the respective contentions, we find that though the Zilla Parishad acted within its powers in blacklisting the petitioner after giving him due opportunity, the order of blacklisting is excessive in nature for the reason that the same is to operate for an indefinite period which is till the conclusion of the criminal trial.

7. It is an undisputed fact that on the basis of complaints made in the matter of tender works undertaken by the Zilla Parishad, it was *prima-facie* found that the contractors had been paid for the works that had not been carried out. In proceedings for grant of anticipatory bail to the accused, this Court had directed the Superintending Engineer to undertake an enquiry in the matter. The Superintending Engineer accordingly submitted his report and opined that insofar as the petitioner was concerned, there was an over-payment of Rs.9,14,897/- towards the work that was not completed. This report of the Superintending Engineer alongwith other documentary material was considered by the Assistant Director, Local Audit Fund, Gadchiroli. It endorsed the conclusions recorded by the Superintending Engineer and insofar as the petitioner is concerned, the aspect of payment for the work not completed was maintained. After receiving this report from the Local Audit Fund Authority the petitioner was issued two show cause notices. After granting due opportunity to the petitioner, the order of blacklisting came to be issued.

8. We find that the order of blacklisting was preceded by two show cause notices that were duly replied by the petitioner. After considering the same the impugned order of blacklisting came to be passed on 22.05.2020. In proceedings where an order of blacklisting is put to challenge the, Court would be more concerned with the decision making process rather than the decision itself. It is for the Principal to determine whether a particular bidder/contractor should be permitted to enter into a contract with it. If for reasonable and relevant reasons the Principal finds that it would not be in its interest to enter into a contract with a particular contractor it would have that freedom to do so subject to following the procedure prescribed. As stated above, the petitioner was issued two show cause notices and after considering the entire material including the reply of the petitioner the action of blacklisting has been undertaken. It has been stated that without completing the work assigned but by showing that the work allotted to have been completed by recording it in the Measurement-Book, there was misappropriation of State funds. In the light of the pending criminal proceedings the name of the petitioner was put in the list of blacklisted contractors. It is thus clear that on the basis of material available with the Zilla Parishad it has found it fit to blacklist the petitioner. A reasonable view of the matter having been taken by the Zilla Parishad we do not find that the order of blacklisting in these facts deserves to be interfered with.

9. Having found that the order of blacklisting was justified in the facts of the case, the aspect that it is to operate till conclusion of the criminal trial appears to be excessive in nature. The petitioner is not in a position to gather as to when said trial would be concluded since he is one of the accused therein. In *M/s Kulja Industries Limited* (supra) the Hon'ble Supreme Court has noted that debarment for an indefinite period would be harsh on a contractor. It has further observed that the period of debarment ought to depend upon the gravity of the offence, violations and breaches that may be prescribed. The Hon'ble Supreme Court was in that context pleased to direct the Principal to determine the period for which the order of blacklisting was to operate. We find that in the present case while directing the name of the petitioner to be included in the list of blacklisted contractors the Zilla Parishad ought to have specified the period of such debarment. Debarment till the conclusion of the trial in effect amounts to debarment for an indefinite period. That the Zilla Parishad would be free to consider the matter at the conclusion of the criminal trial based on the judgment therein goes without saying. In that view of the matter, we are inclined to permit the Zilla Parishad to consider the appropriate period of debarment of the petitioner in the present facts.

10. In the light of aforesaid discussion, the following order is passed:-

- (A) The action taken by the Zilla Parishad of blacklisting the petitioner by the order dated 22.05.2020 is upheld.
- (B) The Zilla Parishad however is directed to reconsider the period for which such debarment ought to operate since the order dated 22.05.2020 debars the petitioner for an indefinite period. The same shall be done after granting an opportunity to the petitioner.
- (C) It is made clear that it would be open for the Zilla Parishad to take further steps based upon the adjudication of the criminal proceedings that are pending against the petitioner pursuant to Crime No.32 of 2015.

11. The writ petition is partly allowed in aforesaid terms. Rule accordingly. No costs.

(SMT. M.S. JAWALKAR, J.)

(A.S. CHANDURKAR, J.)

APTE